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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/540,024	03/31/2000	Arthur O. Tzianabos	B0801/7169	1627

7590 11/24/2004

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EXAMINER

LIU, SAMUEL W

ART UNIT PAPER NUMBER

1653

DATE MAILED: 11/24/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/540,024

Applicant(s)

TZIANABOS ET AL.

Examiner

Samuel W Liu

Art Unit

1653

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**THE REPLY FILED****FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.**

Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) <sup>request for consideration</sup> a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: none.Claim(s) objected to: 7-10, 13, 150, 151 and 157.Claim(s) rejected: 1, 6, 11-12, 14-19, 149, 152-156 and 158-163.Claim(s) withdrawn from consideration: none.

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_.
10. ☐ Other: \_\_\_\_\_

Continuation of 5. does NOT place the application in condition for allowance because: The claim rejection under 35 USC 102, mailed 20 July 2004, stands for the same reasons set forth in the Office action. Applicants argue that the Ferrari's composition does not composed entirely of identical repeating units. The Applicants' argument is unpersuasive because the Ferrari's composition does entirely comprise five identical repeating units (peptides) (see the Office action, pages 3-6), which meets the limitations set forth in the instant claims rejected.

The claim rejection under 35 USC 112, the second paragraph in the previous Office action mailed 20 July 2004 stands for the same reasons set forth in the Office action. Applicant's reply to the Office action argues that "non-native polypeptide" (claim 15) is not unclear as the specification defines "non-native polymer". The applicants' argument is unpersuasive because the specification does not expressly defines the non-native polypeptide (note that definition of "non-native polymer" cannot substitute for definition of "non-native polypeptide" because polymer broadly encompasses biopolymer, e.g., lipid, nucleic acid and polypeptide/protein and naturally-occurring and chemically synthesized polymer).

Applicants also argue that claim 154 recitation "adjacent amino acids" refers to protein/polypeptide primary structure (i.e., amino acid sequence) not higher structure of the protein/polypeptide, e.g., tertiary structure; and thus, the recitation is clear. The applicants' argument is found to be unpersuasive because nowhere sets forth in the specification that the polypeptide structure in the claimed polymer molecule only be limited to the primary structure. Thus, the term "adjacent" in said recitation ambiguously encompasses the higher polypeptide/protein structures, which renders the claim indefinite.



KAREN COCHRANE CARLSON, PH.D.  
PRIMARY EXAMINER